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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARCUS A. ROBERTS, KENNETH A.
CHEWEY, ASHLEY M. CHEWEY, and
JAMES KRENN, on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

AT&T MOBILITY LLC,

Defendant.

Case No. 3:15-cv-03418-EMC

**PLAINTIFFS' ADMINISTRATIVE
MOTION FOR JOINT STATUS
CONFERENCE IN THE *ROBERTS* AND
FTC ACTIONS**

The Honorable Edward M. Chen

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

AT&T MOBILITY LLC, a limited liability
company,

Defendant.

Case No. 3:14-cv-04785-EMC

Pursuant to Civil Local Rules 7-11 and 16-10(c), Plaintiffs in the above-captioned *Roberts* case respectfully request that the Court set a joint status conference for the earliest practicable date in *Roberts* and in the related case pending before this Court, *FTC v. AT&T Mobility LLC*, No. 3:14-cv-4785-EMC (N.D. Cal.) (the “FTC Action”). (*Roberts* and the FTC Action have been formally related; *see* Dkt. 7.) The *Roberts* Plaintiffs respectfully submit that a status conference is necessary to help protect the interests of Plaintiffs and the putative class members in *Roberts*.

As the Court is aware, the *Roberts* action and the FTC Action both challenge alleged false and deceptive advertising and unfair practices by AT&T regarding its “unlimited” mobile data plans. The most recent status conference in *Roberts* was held on August 22, 2019. (Dkt. 143) On August 23, 2019, AT&T and the FTC notified the Court that: they had finalized the terms of a settlement agreement in the FTC Action which includes “consumer redress” (hereinafter, the “FTC Agreement”); AT&T had signed the FTC Agreement; and the FTC Agreement would be presented to the FTC commissioners for approval. (FTC Action, Dkt. 182).¹ It is the *Roberts* Plaintiffs’ understanding that, as of the present filing, the Commission has not yet formally approved the FTC Agreement, but that if and when they do so, AT&T and the FTC plan to file the FTC Agreement with the Court and request that the Court promptly enter an order effectuating same.

Counsel for the *Roberts* Plaintiffs have reached out to counsel for AT&T and the FTC, requesting the terms of the FTC Agreement and asking whether the FTC Agreement purports to adjudicate or release any claims of plaintiffs or the putative class members in *Roberts*. The FTC stated that it was not at liberty to share the agreement with any third party before it is public. AT&T, for its part, would not agree to share the agreement pursuant to a confidentiality (i.e., non-disclosure) agreement where *Roberts* counsel would reserve the ability to bring the information to the Court’s attention (under seal) if they believed it was necessary to do so to protect the putative class’s interests.

While they have not seen the agreement or its terms, the undersigned have been informed

¹ A few weeks prior, AT&T and the FTC had informed the Court they had reached an agreement in principle on certain settlement terms. FTC Action Dkt. 179.

1 (including by AT&T and the FTC declining to state otherwise) that the FTC Agreement may
2 affect the interests of Plaintiffs and the putative class members in *Roberts*. AT&T has suggested
3 that any concerns regarding these issues should be raised in *Roberts* after the FTC Agreement has
4 been entered as an order in the FTC Action. However, by that time it may be too late to avoid or
5 fully avoid undue prejudice to the putative class members.

6 To be clear, the *Roberts* Plaintiffs do not know the terms of the FTC Agreement. They do
7 not know, for example, how much monetary relief will be provided to consumers under the
8 agreement, how that money will be distributed, or whether the agreement purports to require
9 consumers to release their private claims (e.g., by virtue of cashing a check) without adequate
10 notice and/or due process. The *Roberts* Plaintiffs are filing this motion requesting a joint status
11 conference, proactively and without prejudging the agreement, in order to ensure that they have
12 an opportunity to review and weigh in regarding the FTC Agreement *before* the FTC Agreement
13 is entered as an order in the FTC Action. That is critical because neither the FTC nor AT&T
14 represents the interests of Plaintiffs or the putative class members in *Roberts*.

15 The *Roberts* Plaintiffs' interests here are sufficient to support formal intervention in the
16 FTC Action pursuant to Fed. R. Civ. P. 24, however the *Roberts* Plaintiffs submit that the most
17 efficient mechanism to address these issues, for the parties and the Court, would be a joint status
18 conference. Accordingly, the *Roberts* Plaintiffs respectfully request that the Court set a joint
19 status conference in *Roberts* and the FTC Action for the soonest practicable date to address the
20 foregoing. A proposed order is being filed herewith.

21 The *Roberts* Plaintiffs asked AT&T and the FTC to consent to this request for a status
22 conference. Both AT&T and the FTC responded that they would not consent. *See Heller Decl.*,
23 ¶ 2.

1 Dated: October 13, 2019

Respectfully submitted,

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3 By: /s/ Roger N. Heller

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